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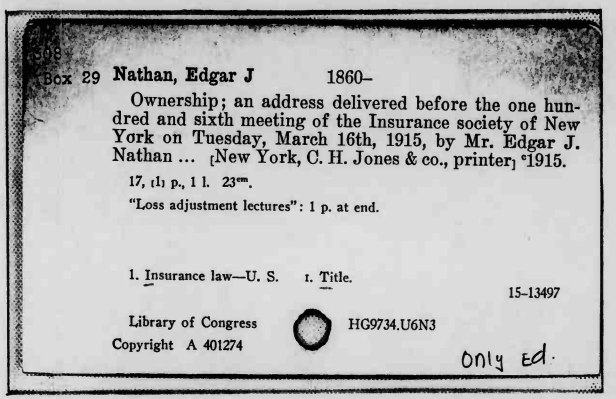

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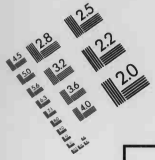

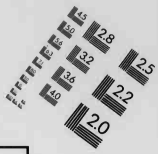

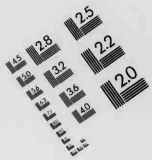

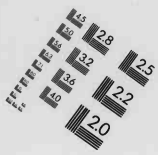

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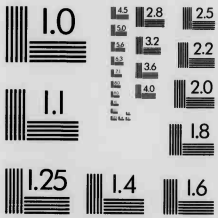

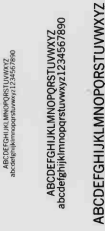

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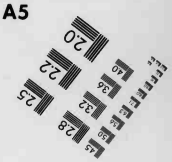

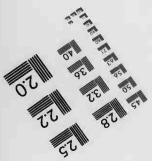

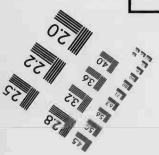

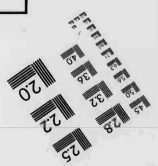

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AN ADDRESS

Delivered before the One Hundred and Sixth Meeting

OF

The Insurance Society of New York

ON

Tuesday, March 16th, 1915

BY

Mr. Edgar J. Nathan

Of Cardozo & Nathan

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Ownership, Insurable Interest, and Change in Interest.

A statement of the law respecting the ownership clause of the standard policy is not without difficulty, and one may only venture to interpret the New York decisions which are reported in the available authorities.

In discussing ownership of, or interest in the subject of insurance, the writer disclaims originality or authorship, and merely attempts to follow judicial discussions on the subject from comparatively recent times, and to submit a general statement of the law in the State of New York, without citing more than a few leading authorities in support of the conclusions; to do more would result in producing a digest, so numerous are the decisions.

It will not be helpful to emphasize the uncertainties and oddities of the law; those who are actively engaged in the business of underwriting are qualified to decide quickly and accurately most of the problems presented from day to day, and they may safely tread the beaten path until some judicial revolutionist has exercised ingenuity in a case of seeming hardship, and has evolved another ground upon which to escape the stern logic of principle whether by waiver, estoppel or other equally unsatisfactory ground.

With independent jurisdiction in each state and also in the federal districts, decisions upon the construction of the contract and upon the liability of the insurer are not infrequently conflicting and discordant. It is therefore with diffidence that one may give an expression of the law upon any particular question of insurance which will be of general application; and it is with equal diffidence that a statement of New York law can be made on several debatable questions which have not yet been settled by the court of last resort.

The great conflagration of London in 1666 stimulated the community to secure protection against fire, and a few years

later the first important concern to grant insurance against loss by fire is said to have been established in that city to cover buildings only; and shortly thereafter insurance was extended to cover loss on personal property. From that time the business has increased steadily and in large measure, so that it has become one of the most important branches of commercial endeavor. The advantages and the failings have been recognized and have been constantly under discussion. The insurer has met many waves of prejudice and attacks from courts and legislatures, but these have been successfully overcome and it may be said that today the business is on a broader and higher plane than at any previous time, and it certainly is established more firmly in the favor of the business world.

In a spirit of keen and wasteful competition, the insurer did not always regard the precise form of indemnity and his natural effort to increase profits permitted laxity in the form of policy, and often led to a reckless disregard of the true principle of insurance; accordingly the courts have been continuously called upon to decide perplexing questions of construction, with the result that uncertainty and conflict have arisen, and generally to the disadvantage of the insurer. So that the time seems to have arrived to consider means of preventing unnecessary insurance litigation. From the beginning the form of contract was of the highest importance; it was necessary for the merchant promptly to receive his just claim; it was not less necessary that dishonest claims should be condemned and fraud exposed; the moral hazard attending a risk has always been a controlling factor in any form of contract, and the personality of an owner who applies for a policy and his interest in the subject of insurance are the first considerations.

The primary purpose of fire insurance is indemnity. A simple agreement to insure a party would cover the risk in an ordinary case, but difficulty arises when special forms are required to cover a particular risk. To guard against imposition on the part of the insured, and also to meet the requirements of business, the form of agreement necessarily became rather technical. The law which has grown up from the customs of merchants, furnishes a natural and appropriate rule of liability, just as a contract may be enforced with least friction which has originated with the merchants who demand its protection and who will answer for a violation of its conditions. That law only is satisfactory which responds to commercial needs, and similarly an insurance contract must accord with sound business and fairly

protect both parties. The concept of the law by the merchant cannot be disregarded, nor can his popular construction of a contract be successfully answered by the rigid application of a clause which operates unjustly.

In every case the insured should be interested both in the prevention and the extinction of fires, and under no circumstances should there be a possibility of double payment. Such a result is avoided by covering the special interest of the insured, but the freedom with which insurers issue forms covering several interests in the same property may result in excessive if not double payment for a single loss.

In recent years the insurers in this country have made commendable efforts to meet the reasonable demands of the insured and at the same time to insist upon a standard of mutual fairness; and there has long been a constant agitation to secure a uniform policy for use in all the states; such a form was earnestly advocated by the National Board of Fire Underwriters at meetings in 1867 and 1868, and the obvious objections to a peculiar form for use in any one state were pointed out.

From that time to the present day the form of insurance contract has been before courts and legislatures and has been the subject of debate by many associations. In the early fire insurance policies the insurer merely agreed to make good unto the insured loss or damage by fire not exceeding the amount specified nor the interest of the insured in the subject matter; and it was generally provided that if the interest was other than unconditional and sole ownership, it must be so expressed, and also that the policy should be void in case of sale or transfer. The present policy is not substantially different in stating that the Company does insure the individual against all direct loss or damage by fire.

It may not be generally known that Connecticut, which has long held a commanding position as an insurance centre, adopted the first legislative enactment for a standard form. In 1867 the Legislature of that state adopted an act for uniform conditions as to the risk (Chap. 121, Laws 1867); but this policy was unsatisfactory in many of its provisions and it aroused such strong and well grounded criticism that the act was repealed in the following year (Chap. 7, Laws 1868 and see Chap. 4, Laws 1868).

Massachusetts promptly took up the question and in 1873 passed an act to establish a standard form for insurance policy, which was set out in the statute; that state thus adopted the first standard form which, with various changes and additions, has continued in use (Chap. 331 Laws 1873).

New York followed in 1886 by enacting a statute requiring insurers to use a standard policy (Chap. 488 Laws 1886) and pursuant thereto the Superintendent of Insurance approved the form which has since been used in this and other states with great satisfaction to all concerned, and which has fairly served its purpose of solving many doubts and preventing many controversies.

We shall always pay tribute to the framers of the wise and comprehensive contract which was produced in this State as a result of the work undertaken by a Committee of the New York Board of Fire Underwriters in collaboration with the National Board, aided by distinguished counsel. This policy is plain in its language and sufficiently flexible to be adapted to nearly every ordinary case; the facility with which its clauses operate is indeed remarkable; it permits the insurer to issue a binding contract practically without investigation, and thus affords a safe and economical method of granting insurance almost on demand.

By careless practice all the safeguards of the standard policy, evolved after great care and thought, may be rendered nugatory by a form which an inexpert and zealous clerk accepts in the haste of daily duties; and much of the litigation has arisen from such an unintentional departure from the standard policy. The standard form recognizes the primary principles of insurance, and a brief reference to the application of the clause under consideration to different classes of risk will present the rationale of many of the decisions.

True fire insurance does not insure property. It insures the interest of a party in property. The necessity for an insurable interest is based upon the cardinal principle that a contract of insurance is essentially one of indemnity and not one for profit. There can be no claim for indemnity where there is no loss, and no loss where there is no interest. Insurance contracts without an interest on the part of the insured were permitted at common law, but it soon appeared that they afforded temptation for wrongdoing and remedial legislation was effected in the famous statute against wager policies adopted in England in 1774 (Stat. 14 George III.) Similar legislation against wagers is contained in the law of this State (Penal Code, Sec. 973) and the statute expressly provides that it shall not extend to "insurance made in good faith for the security or indemnity of the party assured."

With no interest, the policy is now deemed a wager, which has been defined as the hope of gain, but not indemnity against loss; or as a seeking of gain through chance, as opposed to a

contract to avoid loss by reason of chance. It has been aptly said that "the gambler courts fortune; the insured seeks to avoid misfortune."

The test in determining whether an insurable interest exists is to inquire whether the insured is so situated with respect to the subject matter of insurance that its destruction might be reasonably expected to impair the value of his interest; it need not be a property interest, for an interest to be insurable does not depend necessarily upon ownership; it may be a qualified or limited ownership disconnected from any title, lien or possession. It is sufficient that the insured shall have a direct pecuniary interest in the preservation of the property, so that he will suffer loss by its destruction, or will be deprived of its possession or of profit therefrom; or of its security or other benefits dependent on the continued existence of such property.

While all writers concede that there must exist an insurable interest it is not easy to give an exact definition of this term, although it was thus attempted in the Civil Code of California (Sec. 2536 Code in force 1906): "Every interest in property or any relation thereto or liability in respect thereof, of such a nature that a contemplated peril might directly damnify the insured, is an insurable interest." This statement, however, includes several words of uncertain meaning and therefore it will not be of great aid in difficult and doubtful cases. What constitutes an insurable interest in a general sense, is well understood, but its exact meaning in border cases has been discussed and expounded by judges and writers from early times. (Lucena v. Crauford, 1802, 3 B. & P. 75). In brief, there must be a real interest, the value of which will be impaired by its destruction; and that interest must have a legal or equitable basis, as distinguished from a mere hope or expectation. It is not necessary that the interest is such that the event insured against would necessarily subject the insured to loss; it is sufficient that it might do so, and that pecuniary injury would be the natural conclusion (Cone v. Niagara Fire Ins. Co. 60 N. Y. 619).

The authorities indicate the tendency of courts to relax the stringency of the earlier cases, and to apply a more liberal rule in the determination of an insurable interest. An administrator of an insolvent estate, who acquires no title to or interest in real estate, has an insurable interest in buildings belonging to the estate, by reason of the possibility of enforcing claims of creditors against the real property (Herkimer v. Rice, 27 N. Y. 163); and a creditor of an estate of a decedent whose personalty was in-

sufficient to pay debts was held to have an insurable interest in buildings from the destruction of which loss would ensue to the creditor (Rohrbach v. Germania Fire Ins. Co. 62 N. Y. 47). Ordinarily a judgment creditor by reason of his lien on the judgment debtor's property, has no insurable interest therein (Spare v. Home Mut. Ins. Co. 15 Fed. 707), as a judgment, differing from a mortgage, effects a general and not a specific lien on property. But when a mortgagor sells the land and building thereon, he still retains an interest in the preservation of the building in order that his debt may be paid, and therefore he has an insurable interest and may hold insurance on the building (Waring v. Loder, 53 N. Y. 581).

The amount of interest or its character is not material in determining the question of insurable interest (Insurance Co. v. Stinson, 103 U. S. 25). Thus a stockholder in a corporation has no legal title to the corporate assets, but he has rights of a pecuniary nature which may be prejudiced by the destruction of the corporate property; in a case where that academic question was decided the measure of damages was said to be the actual loss, to be ascertained by proof, but the court was not called upon to determine the extent of recovery (Riggs v. Commercial Mutual Ins. Co. 125 N. Y. 7). And a person interested in royalties payable for the privilege of using his patents where the amount of royalties was to be diminished in the event of the destruction of the insured property by fire, has an insurable interest in the property (National Filtering Oil Co. v. Citizens Ins. Co. 106 N. Y. 535); and so has the owner of unused revenue stamps, which were redeemable from the government, if lost (U. S. v. American Tobacco Co. 166 U. S. 468).

The general rule is that the insured must have an insurable interest in the property both at the time the policy is issued and at the time of loss. The necessities of business, however, have brought about a more reasonable doctrine, and a policy upon property in which the insured has no interest at the time of issuance is not a wager, if he acquires an interest during the life of the policy and retains it at the time of loss. So that a policy covering fluctuating stock or goods acquired from time to time during the term of the policy is valid (Hooper v. Hudson River Fire Ins. Co. 17 N. Y. 424; Wolfe v. Security Fire Ins. Co. 39 N. Y. 49).

A policy covering shifting stock has been upheld upon the theory of the suspension of the contract of insurance. It seems more logical to say that an agreement is implied for the substitution of similar property, especially in view of the alienation clause. It is, of course, the intent of the parties that property may be sold and replaced and that the subject of insurance may consist of any similar property answering the description at the time of the fire. If such is the intention there is no legal objection; and any other construction of a policy covering stock in trade continually changing would render it worthless as an indemnity (Hoffman v. Aetna Fire Ins. Co. 32 N. Y. 405).

The insured need not disclose the nature of his ownership or interest, but in accepting the policy he now warrants that his interest in the property covered by the policy is that of sole and unconditional owner (Lasher v. St. Joseph F. & M. Ins. Co. 86 N. Y. 423). The well settled distinction between representations and warranties was appreciated by the framers of the standard policy, and the insured accepts an owner's policy at his peril. No inquiry is necessary and the insurer may assume that the insured is the sole and unconditional owner unless otherwise stated in the policy. The clause is a condition precedent at the inception of the contract, and if not performed renders the policy void.

The warranty as to the character of ownership is affirmative, relating to the state of facts existing at the commencement of the risk; the warranty as to change of interest is promissory and applicable to conditions arising during the term of insurance. These conditions were wisely made warranties to overcome the tendency of courts to relieve the insured from forfeitures. A false statement or representation and its materiality are generally questions of fact; while a warranty, whether material or not, is expressly agreed to be true. A representation may be equitably or substantially answered; but a warranty must be strictly complied with (Donley v. Glens Falls Ins. Co. 184 N. Y. 107).

This condition as to ownership makes it possible to accept risks promptly, with the knowledge on the part of the insurer that a loss will fall exclusively upon the applicant, and that the insurer will be apprised of any fact which qualifies or limits this interest (Weed v. L. & L. Fire Ins. Co. 116 N. Y. 106; Hunt v. Springfield F. & M. Ins. Co. 196 U. S. 47).

The provision is not to be construed in a technical sense. It requires that the insured shall be the actual and substantial owner whether the title is legal or equitable. To be unconditional and sole the interest must be entirely vested in the insured, not conditional or contingent; nor for life or years, or in common with others; but the interest must be such that the entire loss

in the event of destruction falls upon the insured. It has been tersely said that ownership is sole when no one but the insured has any interest in the property, and it is unconditional when the quality of the estate is not limited in any way.

Thus, in the absence of any disclosure, the insurer can rely upon the agreement of an applicant as to ownership; an owner is naturally most alert to avoid a loss, and the physical and moral hazard may be fairly estimated from his character and methods of business. Here enters the important personal element, always recognized, and plainly adopted in the standard clause. If the risk is accepted, then during the life of the policy the Company knows that the insured is covered as an owner only; the policy makes provision equally plain that it shall become void if such owner subsequently permits any change whereby his interest becomes less than that of sole ownership, or if he attempts to give a stranger the benefit of the contract.

A common method of relieving the insured from the warranty as to ownership is by adding the words "as interest may appear." This means what is clearly implied, and whatever interest the insured may personally own in the subject matter of the insurance is covered and he can recover a loss to his particular interest, although it is less than unconditional and sole ownership; the clause in the policy is superseded by this broader phrase (Dakin v. Liverpool, L. & G. Ins. Co. 77 N. Y. 600). This provision is often useful in preventing a breach which otherwise would occur by reason of facts known to all parties, and it does not introduce the dangers attendant upon the use of the so-called commission clause, to which brief reference will be made later.

The insured having warranted that he is the unconditional and sole owner of the property also agrees that any change in interest, title or possession in the subject of insurance shall render the policy void; plain as this language seems, it is frequently perplexing to determine what is such a change.

The language in which the alienation clause was previously incorporated in policies was rarely uniform, and this gave rise to various decisions depending upon the particular phraseology adopted (Abstract of forms and decisions, May on Insurance, 4th Ed. page 575). In reviewing the authorities passing on this clause, it is therefore necessary to consider the exact words used in each case.

The reason of the rule that the alienation of property works a forfeiture, is based on the want of an insurable interest at the

time of loss. An absolute sale of the subject of insurance illustrates the simplest and most obvious instance of alienation.

In construing clauses in the earlier policies which prohibit a sale in general terms, it was held that to work a forfeiture there must be a transfer of the entire interest of the insured, and that if the insured retained any insurable interest, he will be protected by the policy (Hitchcock v. N. W. Ins. Co. 26 N. Y. 68). The condition in the present policy against a change would be violated by a transfer of a partial interest (Savage v. Howard Ins. Co. 52 N. Y. 502; Cooley on Insurance, page 1732).

An assignment by the insured for the benefit of his creditors effects such a change in ownership of the subject of insurance as will render the policy void (Northam v. Dutchess Co. Mut. Ins. Co. 166 N. Y. 319; reversing s. c. 51 App. Div. 618); but whether the mere appointment of a receiver in bankruptcy, following an adjudication against the insured, effects a change in title, interest or possession, does not seem to have been settled. In such case the insured remains the owner of the property, and it has been said that the appointment of a receiver tended to add to, rather than diminish the care and oversight of the insured property; it has been held in an action to dissolve a partnership that the appointment of one of the co-partners as a receiver, works no change, for the exclusive control is merely given to one of the firm. The trend of the decisions indicates that until the appointment of a trustee in bankruptcy no change occurs (Fuller v. Jameson, 98 App. Div. 53; s. c. affirmed 184 N. Y. 605; Perry v. Lorillard Fire Ins. Co. 61 N. Y. 214; Keeney v. Home Ins. Co. 71 N. Y. 396).

An assignment of the policy by the insured as a pledge for a debt is not a breach of the condition against an assignment of the policy before a loss, for the reason that no interest in the insured property was transferred, and the assignment which the policy prohibits is held to be in connection with the events which affect ownership; without such an interest the assignment would be inoperative, and the policy would not be void, but of no value (Griffey v. N. Y. Central Ins. Co. 100 N. Y. 417). And so a deed absolute in form, but in fact given simply as security for debt, is a mortgage only, under which title does not pass in law, and therefore the policy is not invalidated (Barry v. Hamburg-Bremen Fire Ins. Co. 110 N. Y. 1).

A sale upon execution of real estate before the expiration of the period allowed for redemption does not work a change of title or interest (Wood v. American Fire Ins. Co. 149 N. Y.

382). It would seem that the issuing of an execution and a levy thereunder on personal property of the insured would operate as a change of possession, but the law is to the contrary; to reach this conclusion, the clause that a policy shall not be invalidated by a "change of occupants without increase of hazard" was invoked by the court. That clause seems applicable to real property only, but it has been held to relate to a policy on personal property as well. Thus the store in which goods are kept is said to be the important element in the risk, and that insurance on personal property in that place is not affected by a change of occupancy unless by such change the risk has become more hazardous. When a sheriff levied on goods in a store a change of possession certainly appears to have taken place, but our highest court, by a vote of four to three, worked out a contrary result, holding that the taking possession by the sheriff did not alone avoid the policy; in saying that the provision should not receive a harsh or narrow construction the court apparently considered the interests of one of the parties only, for the decision was rendered in spite of the really illuminating fact as to moral hazard, that a fire destroyed the goods the day after the levy (Walradt v. Phoenix Ins. Co. 136 N. Y. 375).

An addition to a building had been condemned as a public nuisance; its removal had been ordered and the owner agreed to take it down several months before a fire occurred; the insurer claimed that legal process or voluntary act of the insured had effected such changes in the interest, title or possession of the structure as to vitiate the insurance, but this contention was overruled, and the insured recovered the value of the structure although the fire may have resulted in a practical benefit (Irwin v. Westchester Fire Ins. Co. 199 N. Y. 550, affirming s. c. 58 Misc. 441).

The interest of the insured is held to be changed if a firm takes in a new partner (Germania Fire Ins. Co. v. Home Ins. Co. 144 N. Y. 195); but there is no change if one partner retires from the firm, as a policy is not affected by a transfer between the parties insured. In such case there is no decrease in the value of the interest of the insured, and no new personal element is introduced; the insured continues to have no less interest to watch and guard the property, and thus the spirit and intention of the clause to prevent a greater moral hazard are preserved (Hoffman v. Aetna Fire Ins. Co. 32 N. Y. 405; Rosenstein v. Traders Ins. Co. 79 App. Div. 481).

A sale in foreclosure does not violate the alienation clause

for the reason that there is no change of title until the delivery of a deed (Haight v. Continental Ins. Co. 92 N. Y. 51). Nor is an executory contract for the sale of property, without change of possession, a breach of the policy condition, which is intended to apply only to such a transfer which divests the insured of title to, or control over the property (Browning v. Home Ins. Co. 71 N. Y. 508; Wood v. American Fire Ins. Co. 149 N. Y. 382; Tiemann v. Citizens Ins. Co. 76 App. Div. 5; O'Neil v. Franklin Fire Ins. Co. 159 App. Div. 313). And where a building is destroyed by fire between the making of the ordinary contract of sale of real property, and the delivery of the deed, the loss usually falls upon the vendor (Goldman v. Rosenberg, 116 N. Y. 78; Listman v. Hickey 65 Hun. 8; affirmed 143 N. Y. 630).

But where the vendee is let into possession under such a contract, there is a breach of the condition. The test is said to be whether the vendor has parted with the absolute control and dominion over the subject of insurance, and where a formal delivery of the deed was delayed for convenience only, such a vendee becomes an equitable owner and liable for any loss (Sewell v. Underhill, 197 N. Y. 168; affirming s. c. 127 App. Div. 92); and the vendor in such case cannot enforce his insurance because there has been a change of title or possession (Sewell v. Home Ins. Co. 131 App. Div. 131). A change in interest may occur without change of title, for the word interest is broader than title, and embraces both legal and equitable rights (Brighton Beach Racing Assn. v. Home Insurance Co. 113 App. Div. 728; affirmed without opinion, 189 N. Y. 526).

A colorable transfer to defeat the claims of creditors is effective at least for some purposes, and therefore such a transfer would invalidate the policy; but a transfer without consideration and with no act of the parties thereunder, and without an intention to have it effective is analogous to an unexecuted gift and therefore is without legal effect, and the policy is not avoided (Rosenstein v. Traders Ins. Co. 79 App. Div. 481; s. c. 102 App. Div. 147; s. c. 112 App. Div. 902; affirmed 188 N. Y. 639; Forward v. Continental Ins. Co. 142 N. Y. 382). The cases in which this question was presented do not discuss the legal principles but rather their application to facts which were presented in a varying light in accordance with the flexible conscience of an interested party.

A passing of property by death or by the will of the insured was formerly held to be such a change of interest as avoided the policy, so that the clause in the present policy properly provides

that the policy shall not be affected by such a change (Sherwood v. Agricultural Ins. Co. 73 N. Y. 447; Matter of Hine v. Woolworth, 93 N. Y. 75).

A review of these principles shows that the standard policy was drawn with full and precise regard to their application when a loss occurs; all the safeguards, however, thus provided, may be superseded by a few words in a special form attached. While, in general, a policy is personal, enuring only in favor of the particular individual named, still, through him many interests may be covered under forms which have become popular in changing the application of a simple contract to make good or indemnify.

It is well understood that the warranty of ownership is waived by covering the interest of the insured as it may appear; and also that interests other than those of the insured may be covered by attaching the commission clause covering the insured on goods his own or held in trust or otherwise. It is, however, exceedingly difficult to determine the extent to which some of these general forms may extend the liability of the insurer, and it is important that the legal effect of them be clearly understood; one cannot safely act upon general principles without a full understanding of the operation of the common clauses which are not a part of the standard form. A discussion of the commission clause involves many perplexing questions, and a presentation of that subject is to be made to this Society by one who is peculiarly well qualified for the task. A brief reference to this undefined interest of unknown parties will emphasize the importance of securing a determination on debatable forms so that the rights of both parties may be known in advance of the assumption of risks.

With an insured of known character and principles, the interests of strangers in property in his possession or under his control may be covered without undue moral hazard; any claim must be presented by and adjusted with that individual, and the Company, through him, is safeguarded against fraud or imposition either before or after a loss. It is common for merchants to leave goods with a manufacturer, or bailee, but generally at owner's risk of fire; but if a bailee undertakes to insure the property of the bailors there is no longer any question of his right to collect in their behalf (Stillwell v. Staples, 19 N. Y. 401; Lee v. Adsit, 37 N. Y. 78; Waring v. Indemnity Fire Ins. Co. 45 N. Y. 606; Symmers v. Carroll 207 N. Y. 632; Home Ins. Co. v. Baltimore Warehouse Co. 93 U. S. 527; Cal. Ins. Co. v. Union Compress Co. 133 U. S. 387).

It is not essential that the person to be insured should be named in the policy and if a company is willing to write a policy without designating the parties insured, it acquiesces in accepting a risk on interests of unknown owners, and must accept all the consequences. But an unfortunate and seemingly illogical decision was made in construing a policy covering property of a firm under the usual commission clause. The insured rejected a quantity of beans which by agreement they held for the owner pending a re-sale. After a fire payment was made to the insured in accordance with an agreement adjusting the loss, but the insured made no claim for the loss on the beans not owned by them. Thereupon this apparent stranger to the contract brought a direct action against the insurer, disregarding its previous settlement and the cancellation of policies on payment, and a recovery was permitted. This seems to be the only authoritative decision in this State where the court upheld the right of a stranger to such form of contract, to maintain an independent action. The opinion does not discuss fully the principles of law, but if that decision is sound, it is as dangerous to issue a policy with the commission clause as to insure "for account of whom it may concern." (Utica Canning Co. v. Home Ins. Co. 132 App. Div. 420; Czerweny v. Nat. Fire Ins. Co. 139 N. Y. Suppl. 345, App. Term Jan. 1913).

It is not believed that the Court of Appeals will uphold the doctrine of this decision, but it will have great weight in the lower courts so long as it remains unreversed; that case well illustrates the serious consequences of inconclusive litigation involving a question of general import, and renders uncertain and harmful a common and useful form. (But see, Burke v. Continental Ins. Co. 184 N. Y. 77). When insuring the interests of strangers to the contract we must understand the broadest and most inadvisable form, covering for account of whom it may concern. This is freely used in marine insurance, but it has no place in fire insurance contracts. An inappropriate use of this form may practically destroy the protection of well settled legal principles and may open up a limitless field of litigation, in unexpected jurisdictions, and by unknown claimants.

A consideration of the subject of this paper may be helpful in reviewing the many and varying claims which arise in practice, but without a complete understanding of the modifications which follow from the varying forms so freely adopted, one may soon become bewildered by legal problems which still await final adjudication.

The greatest laxity and consequent danger to the insurer may be found in the indiscriminate use of forms devised by zealous brokers to cover a risk not within the contemplation of the company. The form becomes an essential part of the contract, and the company should not invite a controversy by accepting language of doubtful meaning (see "Forms" from Standpoint of the Company, by W. N. Bament, and from Standpoint of the Broker, by Julian Lucas, Jr.; papers of The Insurance Society of New York 1912). The special clause attached governs the contract, and when inconsistent with the general conditions of the policy that which is more favorable to the insured will apply (Michael v. Prussian Nat. Ins. Co. 171 N. Y. 25, 33).

The broker owes a legal duty to his principal and he must have the requisite knowledge and skill to effect the indemnity required in each case (Burges v. Jackson, 162 N. Y. 632, affirming s. c. 18 App. Div. 296; Fries-Breslin Co. v. Bergen, 176 Fed. Rep. 76); but he owes no legal duty to the insurer other than to use good faith; here, as in other relations, the broker sometimes occupies an equivocal position between a desire to retain the good will of the insurer and his obligation to guard the interests of his principal.

So far as possible insurers should adhere to general principles and avoid the use of ambiguous or unnecessary words, and every effort should be exercised to eliminate uncertainty. When, however, the meaning is doubtful, it is wise to procure judicial interpretation so that language of common use may be adopted without misunderstanding. The rule of expediency carries far in all affairs, and experienced adjusters have decried the trouble and anxiety occasioned by doubtful phraseology, while timorous about seeking a decision which will forever settle the doubt, but which will also eliminate a forceful and persuasive argument to present to a stubborn or unreasonable claimant.

The courts are not fossilized; they reflect the spirit of the times and endeavor to mould relief to new conditions. Legislatures are apt to adopt current opinions, without adequate reflection, just as the populace would hastily recall a judge, not because of an improper pronouncement but because of an unpopular decision. Chance is of necessity an incident to the business, but it should not be permitted to overshadow conservatism and adherence to primary purposes and principles. The original purpose is often obscured or lost in an effort to subserve convenience and to facilitate the issuance of contracts which may be of greater import than either party appreciates. While litigation is to be

deprecated, except when inevitable, it furnishes a far better remedy than a compromise with principle; a question settled for all time is of lasting value, while a compromise may settle a particular case and leave the doubt for continuing debate by parties and counsel.

It is to be hoped that this Society will advocate greater unanimity in insurance law, and a uniform policy to be used in all the states. It may even be advisable to consider a revision of clauses not now in the Standard Policy, for it seems important to take these clauses, as well as the main policy, outside the realm of legal debate. The application of the law depends so greatly on language that we emphasize the importance of special forms, because it is common experience that the best laid plans may be frustrated by inattention to seeming trifles. With the lapse of time nothing is more certain than that some of our present views will change, and that indeed is the best proof of progress. But principles of law become firmly settled and a review of some of the recent decisions in this State plainly shows that many of the legal controversies have arisen from a departure from established rules, and much of this litigation should not have been necessary. In conclusion we may quote the most recent expression of our highest court referring to the form of policy: "Insurance contracts above all others should be clear and explicit in their terms. In a word, they should be so plain and unambiguous that men of average intelligence who invest in these contracts may know and understand their meaning and import." (Paskusz v. Phila. Cas. Co. 213 N. Y. 22).

"LOSS ADJUSTMENT" LECTURES

"THE TRUE PURPOSE OF THE LOSS SETTLEMENT"—Theory of Insurance. Indemnity. —*Allen E. Clough.*

"WHAT IS A FIRE LOSS?"—Direct and Consequential loss—the distinction between. No Liability for loss by interruption of business, manufacturing processes or otherwise. First lines of policy and policy condition line 42.
—*W. N. Bament.*

"CASH VALUE"—Actual cash value of property at the time any loss or damage occurs. Liability is for the actual cash value of the property at the time any loss or damage occurs, with proper deduction for depreciation however caused, and shall in no event exceed what it would then cost the assured to repair or replace same with material of like kind or quality. Policy condition lines, 1, 2. —*L. C. Williams.*

"THE APPRAISAL" — Appraisals — Options reserved to the company. Policy condition lines 3-5, 86-93. —*W. O. Robb.*

"THE CLAIM—THE PROOF OF LOSS—WHEN IS LOSS PAYABLE?"—The sum for which the company is liable shall be payable sixty days after due notice, ascertainment, estimate and satisfactory proof of loss have been received by company in accordance with the terms of the policy. What is a claim and satisfactory proof of loss? Policy condition lines 2, 3, 4, 67-85, 92-95, 106-107.
—*Robert J. Fox.*

"ABANDONMENT, PROTECTION AND REMOVAL OF PROPERTY"—There can be no abandonment of the property to the company, and, if the property is so endangered by fire as to require removal to a place of safety the future liability of the company in reference thereto, including its cover during and after the fire, and whether liable for the expense of the removal of the goods in danger; the duty of the assured to protect his property from further damage. Policy condition lines 5, 6, part of 32, 33, 60-66, 67, 68.
—*Frederick B. Campbell.*

"CONCEALMENT, MISREPRESENTATION, FRAUD OR FALSE SWEARING"—Before or after a loss. Policy condition lines 7-10.
—*Frank Sowers.*

"OWNERSHIP"—Sole and unconditional ownership—Insurable interest—Change in interest, title or possession. Policy condition lines 16, 17, 18, 19, 20, 21, 22.
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"INCREASE IN HAZARD"—Policy condition lines 11-16, 23-30, 49-50.
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"FORMER AND PRESENT DAY METHODS OF ADJUSTMENT" —*Samuel R. Weed.*

"NON-LIABILITY MATTER"—No liability for loss by order of civil authority; for loss by explosion unless fire ensues; if building or any part thereof fall except as a result of fire; for loss occasioned by ordinance or law regulating construction or repair of building. Policy condition lines 31, 32, 34, 36, 37.
—*William B. Ellison.*

"UNUSUAL AND INTERESTING FIRE LOSS CLAIMS" —*William R. Pitcher.*

"LIABILITY FOR INTERNAL REVENUE TAX AND CUSTOMS DUTY"

"NON-LIABILITY MATTER, UNLESS SPECIFICALLY ASSUMED"—No liability, unless specifically assumed on drawings, tools, implements, models, patterns, scientific apparatus, store or office furnitures, or fixtures, or property held on storage or for repairs. Policy condition lines 38-41. —*W. J. Nichols.*

"THE MORTGAGEE CLAUSES, THE STANDARD MORTGAGE CLAUSE, THE SIMPLE LOSS PAYABLE CLAUSE"—If with the consent of the company there exists under the policy an interest in the subject of insurance—in favor of others than the assured—How the preceding conditions are to be applied. Policy condition lines 56 to 59, inclusive. —*Leo Levy.*

"SUBROGATION"—And the effect of a waiver of subrogation rights. Policy condition lines 102-105.
—*W. H. Van Benschoten.*

"CANCELLATION AND SUBSTITUTION" — Knowledge and authority of agent or broker. Policy condition lines 51-55.
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"WAIVER AND ESTOPPEL" —*W. J. Nichols.*

"THE AGENT—AUTHORITY OF AGENT AND OFFICERS OF COMPANY"—No person unless duly authorized in writing shall be deemed the agent. Policy condition lines 47, 48. This policy made and accepted subject to the foregoing stipulations, (closing paragraph of Standard Policy). —*Frederick T. Case.*

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"WHOLE INSURANCE"; NON-CONCURRENT INSURANCE—What is the "Whole Insurance"—apportionment of non-concurrent insurance. Policy Condition lines 96-98. —*Allen E. Clough.*

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